



**Billing Code 6325-63-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**48 CFR Parts 1609, 1615, 1632, and 1652**

**RIN: 3206-AN13**

**Federal Employees Health Benefits Program: FEHB Plan Performance Assessment System**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the system for assessing the annual performance of health plans contracted under the Federal Employees Health Benefits (FEHB) Program. The purpose of this rule is to measure and assess all FEHB plan performance (experience-rated and community-rated) through the use of a common, objective, and quantifiable performance assessment for the 2016 plan year.

**DATES:** OPM must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Send written comments to Wenqiong Fu, Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW, Washington, DC; or FAX to (202) 606-6010 Attn: Wenqiong Fu. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Wenqiong Fu, Policy Analyst at (202) 606-0004.

**SUPPLEMENTARY INFORMATION:**

**FEHB Background**

The Federal Employees Health Benefits (FEHB) Program was established in 1960 and provides health insurance to over eight million Federal employees, annuitants, and their family members. Chapter 89 of Title 5 United States Code, which authorizes the FEHB Program, allows OPM to contract with health insurance carriers to provide coverage under certain types of plans.

FEHB contracts are either community-rated or experience-rated. In community-rated contracts, the overall premium is based on the carrier's standard rating methodology, taking into account factors in the larger geographic area or "community." In experience-rated contracts, the FEHB carrier considers actual "experience" or medical costs of the group of covered lives. The two types of contracts are regulated under different sections of the FEHB Acquisition Regulation (FEHBAR). Premiums are determined according to distinct processes and plan performance is rewarded differently.

### **Current Performance Assessment System**

Under current regulations, performance is assessed for experience-rated plans based on profit analysis factors that are weighted to create a service charge that OPM pays to carriers. For community-rated plans, performance is assessed according to specific elements that can result in a percentage of premium withheld from payment to the carrier. Both of these performance frameworks are under the umbrella of the Federal Acquisition Regulation, which governs contracting government-wide.

In determining the level of the service charge (profit/risk margin) for experience-rated plans, Contracting Officers consider six categories of factors: contractor performance, contract cost, federal socioeconomic programs, cost control, independent development, and capital investments. OPM Contracting Officers conduct the service charge analysis and rely heavily on the contractor performance factor. Contractor performance is weighted the highest, comprises a significant portion of the total service charge, and involves the largest amount of data.

Community-rated plans have two performance elements that may lead to a percentage of premium being withheld: customer service and critical contract compliance requirements.

## **Proposed FEHB Plan Assessment System**

To establish a consistent assessment system, create a more objective performance standard, and provide more transparency for enrollees, OPM is developing a framework that will utilize a discrete set of quantifiable measures examining key aspects of contract performance and specific criteria for performance factors which will then be linked to health plan premium disbursements.

This regulation proposes to replace the current methods of plan assessment with a new framework, in which both experience-rated and community-rated plans utilize the same measurement criteria. For experience-rated plans, the performance-based service charge will be administered similarly to the current service charge process. For community-rated plans, the performance adjustment will be administered similarly to the current process using an adjustment to net-to-carrier premium payments made during the first quarter of the following contract period. OPM proposes the new assessment system will impact service charge and performance adjustment premium disbursements made in 2017.

This proposed regulation includes four measurement categories for both experience-rated and community-rated plans aimed at improving standards of accountability and transparency. The following categories, defined in 48 CFR 1615.404-70, will be applied to both experience-rated and community-rated plans: (1) Clinical Quality, (2) Customer Service, (3) Resource Use, and (4) Contract Oversight.

The new performance assessment structure is incorporated in 48 CFR, Subpart 1615.4, *Contract pricing*, which describes the profit factors and rewards for FEHB plans. Contract requirements will be amended to indicate required performance measures, and the scoring of measures within the assessment system will be based on plan performance relative to FEHB or national benchmarks, or with respect to the Contract Oversight category, the Contracting Officer's judgment. Each year, identified measures will be communicated to FEHB carriers through advance guidance and then incorporated as a part of the contract.

Three of the performance areas, Clinical Quality, Customer Service, and Resource Use, will contain one or more domains that reflect priorities within each area, and each domain will be comprised of one or more performance areas. The fourth category, Contract Oversight, will be based upon the Contracting Officer's evaluation of contractor performance such as audit findings, fraud/waste/abuse, responsiveness to OPM, benefits/network management, contract compliance, technology management, data security, and Federal socio-economic programs.

OPM expects to update the measures over time, and therefore the regulation lists representative examples of the domains and measures within each category. OPM will issue and periodically update technical guidance describing the measures and methods/formulae for performance scoring. FEHB carriers will receive technical guidance updating measures, methods and scoring in advance of their use in the plan assessment process.

Plan performance on Clinical Quality, Customer Service, and Resource Use will be evaluated against national or FEHB benchmarks. OPM's goal is to build on current performance assessment practices so that we can formally link annual evaluations of FEHB plans with profit factors. The proposed measures will rely upon the evaluation of data from sources familiar to FEHB carriers such as:

**HEDIS** – Healthcare Effectiveness Data and Information Set is a group of clinical measures developed by the National Committee for Quality Assurance (NCQA). HEDIS measures are widely used in U.S. health plan performance systems and have been collected by FEHB for more than ten years.

**CAHPS** – Consumer Assessment of Healthcare Providers and Systems is a survey of health plan enrollees developed by the Agency for Healthcare Research and Quality (AHRQ). FEHB plans have participated in CAHPS and reported results to OPM since 2000.

**Plan administrative data** – OPM collects data from health plans for contract oversight purposes. These may include data on financial management; claims payment timeliness; claims records and utilization data; enrollment reconciliation; surveillance for fraud, waste, and abuse; health information technology implementation; data security; and network adequacy.

This regulatory change is intended to promote a comprehensive approach to health plan management by measuring key performance components.

## **Measurement**

The new performance assessment system will begin in 2016. OPM will announce the applicable categories, domains, measures and weights in FEHB Carrier guidance at a later time, well in advance of implementation so that FEHB carriers have the opportunity to provide feedback through established OPM channels. Prior to each contract year, OPM will identify the most recent available benchmarks for each measure which will be used in applying the new weighted guidelines to determine that year's service charge or performance adjustment for FEHB contracts. Following rate negotiations, for both experience-rated plans and community-rated plans, OPM Contracting Officers will inform FEHB plans of the performance scoring results used in determining each plan's service charge or performance adjustment.

## **Assessing Progress**

Specific domains, measures and weights will be provided in future technical guidance. While there will be continuity over time in many of the domains and measures, the plan assessment system must be dynamic to account for: (1) changes in clinical guidelines and professional standards of care, (2) removal of measures where overall plan performance is at a consistently high level, and (3) the introduction of new measures that are deemed relevant to plan performance.

## **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only health insurance carriers under the Federal Employees Health Benefits Program.

## **Executive Orders 13563 and 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

### **Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

### **List of Subjects in 48 CFR Parts 1615 and 1609**

Government employees, Government procurement, Health insurance

U.S. OFFICE OF PERSONNEL MANAGEMENT.

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Katherine Archuleta  
Director.

For the reasons set forth in the preamble, OPM amends chapter 16 of title 48 CFR (FEHBAR) as follows:

### **PART 1609—CONTRACTOR QUALIFICATIONS**

1. The authority citation for part 1609 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### **Subpart 1609.71 – [Removed]**

2. Remove subpart 1609.71.

### **PART 1615—CONTRACTING BY NEGOTIATION**

3. The authority citation for part 1615 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

4. In section 1615.404-4, paragraph (a) is revised to read as follows:

**1615.404-4 Profit.**

(a) When the pricing of FEHB Program contracts is determined by cost analysis (experience-rated) or by a combination of cost and price analysis (community-rated), OPM will determine a performance based percentage of the price using a weighted guidelines structured approach based on the profit analysis factors described in 1615.404-70. For experience-rated plans, OPM will use the performance based percentage so determined to develop the profit or fee prenegotiation objective, which will be the total profit (service charge) negotiated for the contract. For community-rated plans, OPM will use the performance based percentage so determined to develop an adjustment to net-to-carrier premiums, (performance adjustment) to be made during the first quarter of the following contract period.

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5. Section 1615.404-70 is revised as follows:

**1615.404-70 Profit analysis factors.**

(a) OPM Contracting Officers will apply a weighted guidelines method in developing the performance based percentage for FEHB Program contracts. For experience-rated plans, the performance based percentage will be applied to projected incurred claims and allowable administrative expenses. For community-rated plans, the performance based percentage will be applied to subscription income and will be used to calculate a performance adjustment to net-to-carrier premiums, as described at 48 CFR 1632.170(a)(2), to be made during the first quarter of the following contract period. In the context of the factors outlined in FAR 15.404-4(d), OPM will assess performance of FEHB carriers according to four factors.

(1) *Clinical quality.* OPM will consider elements within such domains as preventive care, chronic disease management, medication use, and behavioral health. This factor incorporates elements from the FAR factor “contractor effort.”

(2) *Customer service.* OPM will consider elements within such domains as communication, access, claims, and member experience/engagement. This factor incorporates elements of the FAR factor “contractor effort.”

(3) *Resource use.* OPM will consider elements within such domains as utilization management, administrative, and cost trends. This factor incorporates elements of the FAR factors “contractor effort,” “contract cost risk,” and “cost control and other past accomplishments.”

(4) *Contract oversight.* OPM will consider an assessment of contract performance in specific areas such as audit findings, fraud /waste/abuse, and responsiveness to OPM, benefits/network management, contract compliance, technology management, data security, and Federal socio-economic programs. This factor could incorporate any of the FAR profit analysis factors listed at 15.404-4(d)(1)(i)-(vi).

(b) The sum of the maximum scores for the profit analysis factors will be 1 percent.

## **PART 1632—CONTRACT FINANCING**

6. The authority citation for part 1632 continues to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

7. In section 1632.170, paragraph (a)(2) is revised to read as follows:

### **1632.170 Recurring premium payments to carriers.**

(a) \* \* \*

(2) The difference between one percent and the performance based percentage of the contract price described at 1615.404-4 will be multiplied by the carrier’s subscription income for the year of performance and the resulting amount (performance adjustment) will be withheld from the net-to-carrier premium disbursement during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier’s Contracting Officer.



Amounts withheld from a community rated plan's premium disbursement will be deposited into the plan's Contingency Reserve.

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## **PART 1652—CONTRACT CLAUSES**

8. The authority citation for part 1652 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

9. In section 1652.232-70, revise the introductory text and paragraph (a) and remove paragraph (f).

The revisions read as follows:

### **1652.232-70 Payments – Community-rated contracts.**

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

#### **Payments**

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts for obligations due pursuant to paragraph (b) of this clause and the performance adjustment described at 1615.404-4, plus any payments made by OPM from the Contingency Reserve.

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10. In section 1652.232-71, revise the introductory text and paragraph (a) and remove paragraph (f).

The revisions read as follows:

**1652.232-71 Payments—experience-rated contracts.**

As prescribed in 1632.172, the following clause shall be inserted in all experience-rated FEHBP contracts:

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts for obligations due pursuant to paragraph (b) of this clause, and the performance-based service charge described at 1615.404-4, plus any payments made by OPM from the Contingency Reserve.

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